

Public Chapter 255

SENATE BILL NO. 1650

By Rochelle

Substituted for: House Bill No. 1212

By Fitzhugh, Curtiss, Gunnels, Whitson

AN ACT To amend Tennessee Code Annotated, Title 45, to enact the Deferred Presentment Services Act.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 45, is hereby amended by adding Sections 2 through 20 as a new chapter to be appropriately designated.

SECTION 2. This act shall be known and may be cited as the "Deferred Presentment Services Act".

SECTION 3. For purposes of this chapter, unless the context otherwise requires:

(a) "Check" means a check signed by the maker and made payable to a person licensed under this chapter.

(b) "Commissioner" means the commissioner of financial institutions or the commissioner's designated representative.

(c) "Department" means the department of financial institutions.

(d) "Deferred presentment services" means a transaction pursuant to a written agreement involving the following combination of activities in exchange for a fee:

(1) Accepting a check dated on the date it was written; and

(2) Holding the check for a period of time prior to presentment for payment or deposit.

(e) "Licensee" means a person licensed to provide deferred presentment services pursuant to this chapter.

(f) "Person" means an individual, group of individuals, partnership, association, corporation, or any other business unit or legal entity.

SECTION 4. No person shall engage in the business of deferred presentment services without having first obtained a license. A separate license shall be required for each location from which such business is conducted. Any person engaged in the business of deferred presentment services on the effective date of this act may continue to engage in the business without a license until the commissioner has acted upon the application for a license if the application is filed within sixty (60) days after the effective date of this act.

SECTION 5. To qualify for a license, an applicant shall satisfy the following requirements:

(a) The applicant shall have a minimum net worth determined in accordance with generally accepted accounting principles of at least twenty-five thousand dollars (\$25,000) available for the operation of each location.

(b) The financial responsibility, financial condition, business experience, character, and general fitness of the applicant shall reasonably warrant the belief that the applicant's business will be conducted lawfully and fairly. In determining whether this qualification has been met, and for the purpose of investigating compliance with this act, the commissioner may review and approve:

(1) The relevant business records and the capital adequacy of the applicant;

(2) The competence, experience, integrity and financial ability of any person who is a director, officer, or five percent (5%) or more shareholder of the applicant or owns or controls the applicant; and

(3) Any record, on the part of the applicant, or any person referred to in subsection (b)(2), of any criminal activity, any fraud or other act of personal dishonesty, any act, omission or practice which constitutes a breach of a fiduciary duty or any suspension, removal or administrative action by any agency or department of the United States or any state, from participation in the conduct of any business.

(c) The requirements set forth in (a) and (b) are continuing in nature.

SECTION 6. Each application for a license shall be in writing and under oath to the commissioner, in a form prescribed by the commissioner, and shall include the following:

(a) The legal name, residence and business address of the applicant and, if the applicant is a partnership, association, or corporation, of every member, officer, managing employee and director thereof;

(b) The location in Tennessee at which the registered office of the applicant shall be located; and

(c) Other data and information the commissioner may require with respect to the applicant, its directors, trustees, officers, members, managing employees or agents.

SECTION 7. (a) Each application for a license shall be accompanied by:

(1) A filing fee of five hundred dollars (\$500) which shall not be subject to refund but which, if the license is granted, shall constitute the license fee for the first license year or part thereof; and

(2) A balance sheet and income statement for the immediately preceding fiscal year end, prepared in accordance with generally accepted accounting principles by a certified public accountant or public accounting firm. For a newly created entity, the commissioner may accept a balance sheet only, accompanied by a projected income statement demonstrating that the licensee will have adequate capital after payment of start-up costs.

(b) The filing fee set forth in (a)(1) above shall be applicable to each location.

SECTION 8. (a) Upon the filing of an application in a form prescribed by the commissioner, accompanied by the fee and documents required in Section 7, the commissioner shall investigate to ascertain whether the qualifications prescribed by Section 5 have been satisfied. If the commissioner finds that the qualifications have been satisfied, and approves the documents, the commissioner shall issue to the applicant a license to engage in the deferred presentment services business in Tennessee.

(b) The license shall be kept conspicuously posted in the place of business of the licensee.

(c) A license issued pursuant to this section shall remain in force and effective through the remainder of the fiscal year ending September 30 after its date of issuance unless earlier surrendered, suspended or revoked pursuant to this act.

SECTION 9. (a) A license issued pursuant to this chapter is not transferable or assignable.

(b) The prior written approval of the commissioner is required for the continued operation of a deferred presentment services business whenever a change in control of a licensee is proposed. Control in the case of a corporation means direct or indirect ownership, or the right to control, twenty-five percent (25%) or more of the voting shares of the corporation, or the ability of a person to elect a majority of the directors or otherwise effect a change in policy. Control in the case of any other entity means the ability to change the principals of the organization, whether active or passive. The commissioner may require information deemed necessary to determine whether a new application is required. Costs incurred by the commissioner in investigating a change of control request shall be paid by the person requesting such approval, subject to the limitations set forth in Section 12.

(c) A licensee shall notify the department five (5) days before any change in the licensee's business location or name.

SECTION 10. Within fifteen (15) days of the occurrence of any one of the events listed below, a licensee shall file a written report with the commissioner describing such event and its expected impact on the activities of the licensee in this state:

(a) The filing for bankruptcy or reorganization by the licensee;

(b) The institution of revocation or suspension proceedings against the licensee by any state or governmental authority;

(c) The denial of the opportunity to engage in the deferred presentment services business by any state or governmental authority;

(d) Any felony indictment of the licensee or any of its directors, officers or principals;

(e) Any felony conviction of the licensee or any of its directors, officers or principals; and

(f) Such other events as the commissioner may determine and identify by rule.

SECTION 11. Licenses issued pursuant to this chapter shall expire on September 30. Each license may be renewed for the ensuing twelve (12) month period upon application by the license holder showing continued compliance with the requirements of Section 5 and the payment to the commissioner annually, on or before September 1 of each year, a license renewal fee of five hundred dollars (\$500).

SECTION 12. (a) The commissioner may promulgate reasonable regulations in accordance with the Uniform Administrative Procedures Act for the enforcement of this act. A copy of any rule or regulation adopted by the commissioner shall be mailed to each license holder at least thirty (30) days before the date it takes effect.

(b) To assure compliance with the provisions of this act, the commissioner may examine the relevant business, books and records of any licensee. The commissioner may charge and collect an examination fee of two hundred dollars (\$200) per day per examiner for any compliance examination conducted by the commissioner, which fee shall not exceed one thousand two hundred dollars (\$1,200) per year.

(c) The commissioner, for the purpose of discovering violations of this act and for the purpose of determining whether persons are subject to the provisions of this act, is hereby authorized to examine persons licensed under this act and persons reasonably suspected by the commissioner of conducting business which requires a license under this act, including all relevant books, records and papers employed by such persons in the transaction of their business, and to summon witnesses and examine them under oath concerning matters relating to the business of such persons, or such other matters as may be relevant to the discovery of violations of this act, including without limitation the conduct of business without a license as required under this act.

SECTION 13. (a) Each licensee shall keep and use in its business any books, accounts and records the commissioner may require to carry into effect the provisions of this act and the administrative regulations issued hereunder. Every licensee shall preserve the books, accounts and records for at least two (2) years.

(b) A licensee may charge a fee to defray operational costs, including without limitation investigating the checking account and copying required documents, photographing the person signing the check, securing the check and customer records in a safe, fire-proof place, maintaining records as required by this chapter, maintaining required capital and liquidity, processing, documenting

and closing the transaction, and for other expenses and losses. The fee authorized by this subsection shall not exceed the lesser of:

(1) Fifteen percent (15%) of the face amount of the check; or

(2) Thirty dollars (\$30). Such fee, when made and collected, shall not be deemed interest for any purpose of law.

(c) Before a licensee shall present for payment or deposit a check accepted by the licensee, the check shall be endorsed with the actual name under which the licensee is doing business.

(d) Any agreement for deferred presentment of a check must be in writing and signed by the maker of the check. The maker of a check shall have the right to redeem the check from the licensee before the agreed date of deposit upon payment to the licensee of the amount of the check. A licensee shall not defer presentment of any personal check for more than thirty-one (31) calendar days after the date the check is tendered to the licensee.

(e) Within five (5) business days after being advised by the payer financial institution that a check or draft has been altered, forged, stolen, obtained through fraudulent or illegal means, negotiated without proper legal authority, or represents the proceeds of illegal activity, the licensee shall notify the district attorney general for the district in which the check was received. If a check or draft is returned to the licensee by the payer financial institution for any of these reasons, the licensee shall not release the check, draft or money order without the consent of the district attorney general or other investigating law enforcement authority.

(f) A licensee shall comply with all provisions of state and federal law regarding cash transactions and cash transaction reporting.

(g) A licensee shall provide each prospective customer, before consummation of the deferred presentment agreement, a written explanation, in clear, understandable language, of the fees to be charged by licensee, and the date on which the check will be deposited or presented by the licensee. The commissioner may promulgate rules establishing additional requirements in order to assure complete and accurate disclosure. The department of financial institutions shall promulgate rules requiring each licensee to issue a standardized consumer notification and disclosure form in compliance with federal truth-in-lending laws prior to entering into any deferred presentment transaction. The required style, content and method of executing the form shall be specifically prescribed by the rules and shall be designed to ensure that the consumer, prior to entering into a deferred presentment transaction, receives and acknowledges an accurate and complete notification and disclosure of the itemized and total amounts of all fees and other costs that will or potentially could be imposed as a result of such agreement. Enactment of this subsection shall not create any inference that a particular method of disclosure was required prior to the effective date of this act.

(h) A licensee shall issue a receipt to each person for whom a licensee defers deposit of a check. The receipt shall include the information described in subsection (g).

(i) If a check is returned to the licensee from a payer financial institution due to insufficient funds, closed account or a stop payment order, the licensee

shall have the right to all civil means available and allowed by law to collect the check; provided, however, the provisions of Tennessee Code Annotated, Title 47, Chapter 29, are not applicable. No individual who issues a personal check to a licensee under this act shall be convicted under the provisions of Tennessee Code Annotated, Section 39-14-121.

(j) No licensee may alter or delete the date on any check accepted by the licensee. No licensee may accept an undated check or a check dated on a date other than the date on which the licensee accepts the check.

(k) No licensee shall engage in unfair or deceptive acts, practices or advertising in the conduct of the licensed business.

(l) Consistent with the nature of deferred presentment transactions no licensee shall require a customer to provide security for the transaction or require the customer to provide a guaranty from another person.

(m) Each licensee must pay the full amount of any check cashed in cash or by check issued by the licensee, less only the fees permitted under this act. Payment by a licensee by means of a check shall not cause the licensee to be subject to the provisions of Tennessee Code Annotated, Title 45, Chapter 7, Part 2.

(n) Each licensee shall display its license in a conspicuous location in its place of business and shall post a notice in a conspicuous location in its place of business containing a description of the charges imposed by the licensee.

(o) No licensee or any person related to the licensee by common ownership or control may have outstanding more than two (2) checks from any one (1) customer at any one time, with the aggregate face value of all outstanding checks from any one (1) customer not to exceed five hundred dollars (\$500).

(p) Each licensee shall inquire of any person seeking deferred presentment services regarding such person's outstanding checks from other licensees. If the customer represents in writing that the customer has no more than two (2) checks outstanding to any licensee or licensees and that the aggregate face value of all outstanding checks issued by the customer for deferred presentment does not equal or exceed five hundred dollars (\$500), a licensee may accept for deferred presentment a check in an amount which, when combined with the customer's other outstanding checks held for deferred presentment, does not exceed five hundred dollars (\$500), so long as such check for deferred presentment complies with subsection (o), above. If the customer represents in writing that the customer has three (3) or more checks outstanding to any licensee or licensees, or if the aggregate face value of all outstanding checks issued by the customer for deferred presentment equals or exceeds five hundred dollars (\$500), a licensee shall not accept another check for deferred presentment from that customer until the customer represents to the licensee in writing that the customer qualifies to issue a new check for deferred presentment in accordance with the preceding sentence. Each licensee may rely on a written representation of a customer regarding the existence of any outstanding checks for deferred presentment held by any licensee other than the licensee receiving the representation.

(q) A licensee shall not renew or otherwise consolidate a deferred presentment transaction with the proceeds of another deferred presentment

transaction made by the same licensee. A transaction entered into in violation of this subsection is void and unenforceable in law or equity.

(r) A licensee shall not use any device or agreement, including agreements with affiliated licensees, with the intent to obtain greater charges than otherwise would be authorized by this chapter.

SECTION 14. (a) If the commissioner determines that an applicant is not qualified to receive a license, the commissioner shall notify the applicant in writing that the application has been denied, stating the basis for denial.

(b) If the commissioner denies an application, or if the commissioner fails to act on an application within ninety (90) days after the filing of a properly completed application, the applicant may make written demand to the commissioner for a hearing before the commissioner on the question of whether the license should be granted.

(c) Any hearing on the denial of a license shall be conducted pursuant to the Uniform Administrative Procedures Act. In such hearing, the burden of proving that the applicant is entitled to a license shall be on the applicant. A decision of the commissioner following any hearing on the denial of a license is subject to review under the Uniform Administrative Procedures Act.

SECTION 15. (a) The commissioner may, after notice and hearing, suspend or revoke any license if the commissioner finds that the licensee has knowingly or through lack of due care:

(1) Failed to pay the annual license fee imposed by this act, or an examination fee imposed by the commissioner under the authority of this act;

(2) Has committed any fraud, engaged in any dishonest activities or made any misrepresentations;

(3) Has violated any provisions of this act or any administrative regulation issued pursuant thereto or has violated any other law in the course of its or his dealings as a licensee;

(4) Has made a false statement in the application for the license or failed to give a true reply to a question in the application; or

(5) Has demonstrated his or its incompetency or untrustworthiness to act as a licensee.

(b) If the reason for revocation or suspension of a licensee's license at any one (1) location is of general application to all locations operated by a licensee, the commissioner may revoke or suspend all licenses issued to a licensee.

(c) A hearing shall be held on written notice given at least twenty (20) days prior to the date of the hearing and shall be conducted in accordance with the Uniform Administrative Procedures Act.

SECTION 16. If, after a hearing, the commissioner finds that a person has violated this act, or any administrative regulation issued pursuant thereto, the commissioner may:

(a) Order the person to cease and desist violating the act or any administrative rules issued pursuant thereto; and/or,

(b) Require the refund of any fees collected by such person in violation of this act; and/or,

(c) Order the person to pay to the commissioner a civil penalty of not more than one thousand dollars (\$1,000) for each transaction in violation of this act or each day that a violation has occurred and continues.

SECTION 17. (a) The commissioner may enter into consent orders at any time with any person to resolve any matter arising under this act. A consent order shall be signed by the person to whom it is issued, or a duly authorized representative, and shall indicate agreement to the terms contained therein. A consent order need not constitute an admission by any person that any provision of this act, or any rule, regulation or order promulgated or issued hereunder has been violated, nor need it constitute a finding by the commissioner that such person has violated any provision of this act or any rule, regulation or order promulgated or issued hereunder.

(b) Notwithstanding the issuance of a consent order, the commissioner may seek civil or criminal penalties or compromise civil penalties concerning matters encompassed by the consent order.

(c) In cases involving extraordinary circumstances requiring immediate action, the commissioner may take any enforcement action authorized by this chapter without providing the opportunity for a prior hearing, but shall promptly afford a subsequent hearing upon an application to rescind the action taken which is filed with the commissioner within twenty (20) days after receipt of the notice of the commissioner's emergency action.

SECTION 18. (a) Any person aggrieved by the conduct of a licensee under this act in connection with the licensee's regulated activities may file a written complaint with the commissioner who may investigate the complaint.

(b) In the course of the investigation of the complaint, the commissioner may:

(1) Subpoena witnesses;

(2) Administer oaths;

(3) Examine any individual under oath; and

(4) Compel the production of records, books, papers, contracts or other documents relevant to such investigation.

(c) If any person fails to comply with a subpoena of the commissioner under this act or to testify concerning any matter about which the person may be interrogated under this act, the commissioner may petition any court of competent jurisdiction for enforcement.

(d) The license of any licensee under this act who fails to comply with a subpoena of the commissioner may be suspended pending compliance with the subpoena.

(e) The commissioner shall have exclusive administrative power to investigate and enforce any and all complaints filed by any person which are not criminal in nature, which complaint relates to the business of deferred presentment services.

SECTION 19. The business of deferred presentment services conducted in accordance with this chapter shall not be subject to or controlled by any other statute governing the imposition of interest, fees or loan charges, including without limitation Tennessee Code Annotated, Section 47-14-104. A licensee shall not have the powers enumerated in this act without first complying with the law regulating the particular transaction involved, but licensees legally exercising any of the powers set forth in this chapter shall not be deemed in violation of Tennessee Code Annotated, Sections 47-9-504(3), 47-14-112, 47-14-115 and 47-14-117.

SECTION 20. (a) Each licensee shall file an annual report with the commissioner by September 1 of each year, containing the following information:

(1) The names and addresses of persons owning controlling interest in each licensee;

(2) The location of all places of business operated by the licensee and the nature of the business conducted at each location;

(3) The names and addresses of all affiliated entities regulated under Tennessee Code Annotated, Title 45, doing business in this state;

(4) Balance sheets, statements of income and expense, and such other statistical information as may be reasonably required by the commissioner, consistent with general accepted accounting practices, for the purpose of determining the general results of operations under this chapter; and

(5) If the licensee is a corporation, the names and addresses of its officers and directors, or if the licensee is a partnership, the names and addresses of the partners, or if the licensee is a limited liability company, the names and addresses of the board of governors of the limited liability company.

(b) If the licensee holds two (2) or more licenses or is affiliated with other licensees, a composite report may be filed, but may not be required.

(c) All such reports shall be filed in such form as may reasonably be required by the commissioner and shall be sworn to by a responsible officer of the licensee.

(d) The information submitted by licensees pursuant to this section shall be afforded the same degree of confidentiality by the department and the commissioner as is applicable to reports filed by industrial loan and thrift companies pursuant to Tennessee Code Annotated, Section 45-5-503.

(e) The commissioner shall prepare and submit to the governor and general assembly, annually, an analysis and recapitulation of such reports for the preceding calendar year for the purpose of reflecting the general results of operations under this chapter.

SECTION 21. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end, the provisions of this act are declared to be severable.

SECTION 22. For the purpose of promulgating rules, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect October 1, 1997, the public welfare requiring it, and shall be repealed at 12:01 a.m. October 1, 1999.